In re Application of: LOWREY et al.

Group Art Unit: 3661

Application No.: 10/614,665

Examiner: Broadhead, B.

Filed: July 7, 2003

Atty. Docket No.: 0308816.0156

Title: INTERNET-BASED SYSTEM FOR MONITORING VEHICLES

# PETITION UNDER 37 CFR §1.183

Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

### Dear Commissioner:

Applicants hereby petition under 37 CFR §1.183 for waiver of the signature of an unavailable co-inventor in connection with submission of a Declaration under 37 CFR §1.131 (attached as Appendix A) for the captioned patent application.

The unavailable co-inventor is Chuck Myers. Mr. Myers is a named inventor of the subject matter of the rejected claims of the captioned application and had originally signed the declaration under 37 CFR §1.63 for the application, but is now unavailable to sign the declaration under 37 CFR §1.131 (see Appendix A).

Proof similar to the proof required for a petition under 37 CFR §1.47 that the nonsigning inventor Mr. Myers is unavailable or refuses to sign is submitted with this Petition and attached as Appendix B ("Declaration of Applicants' Representative"). In summary, applicants

submit that Mr. Myers' failure to respond to repeated requests for execution of the Declaration is tantamount to a refusal to sign the Declaration.

Applicants respectfully request favorable consideration of the present Petition.

Authorization is given to charge Deposit Account No. 11-1110 for the fee required under §1.17(f) for the present Petition. Any questions regarding this Petition are invited to the attention of applicants' undersigned representative.

Date: 7/28/7008

Respectfully submitted,

Michael D. Lazzara Reg. No. 41,142

K&L GATES LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312

Telephone: (412) 355-8994

Fax: (412) 355-6501

E-mail: michael.lazzara@klgates.com

# Appendix A

Art Unit: 3661

Examiner: Brian J. Broadhead : INTERNET-BASED SYSTEM

: FOR MONITORING VEHICLES

Applicants: Lowrey et al.

:

Serial No.: 10/614,665

Filing Date: July 7, 2003 : Confirmation No. 7577

:

### DECLARATION UNDER 37 C.F.R. § 1.131

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

### Dear Commissioner:

We declare as follows:

- 1. We are named inventors of the captioned patent application ("Subject Application").
- 2. We conceived and reduced to practice the invention described and claimed in the Subject Application prior to May 1, 2000, in association with performing work for NetworkCar.com as employees and/or as independent agents serving as consultants for NetworkCar.com.

- 3. The invention described and claimed in the Subject Application was assigned by us to NetworkCar.com, which assignment was recorded with the United States Patent and Trademark Office on July 7, 2003, at Reel 014273, Frame 0607.
- 4. In support of the reduction to practice date in paragraph 2, we attach as Exhibit 1 a photograph of an embodiment of the invention installed in a vehicle for collecting and communicating data associated with operation of the vehicle, among other functions.
- 5. In further support of the reduction to practice date in paragraph 2, we attach as Exhibit 2 a photograph of an embodiment of the invention installed and operating in a vehicle and communicating data to a laptop computer system.
- attach as Exhibit 3 an e-mail sent by inventor Bruce Lightner to inventor Chuck Myers describing data collection and data communication in association with operation of certain embodiments of the invention. In particular, the e-mail states that, "I'm now taking ODB-II data from my 1999 Suburban, sending it via the BellSouth network into our IAS gateway, which places it on the Web at the URL: http://lightner.net/obd." Although certain dates on the e-mail of Exhibit 3 have been redacted, the data collection and data communication functions of the embodiment of the invention described in the e-mail occurred prior to May 1, 2000. In addition, the e-mail illustrated in Exhibit 3 was generated and sent prior to May 1, 2000.
- 7. In further support of the reduction to practice date in paragraph 2, attached as Exhibit 4 is a screen capture illustrating a web interface displaying derived diagnostic information (e.g., odometer readings) on a web site dedicated to presenting information associated with a vehicle. Although certain dates on the screen capture of Exhibit 4 have been

redacted, the web interface and web site as shown were incorporated in connection with reduction to practice of the invention prior to May 1, 2000.

- 8. In further support of the reduction to practice date in paragraph 2, we attach as Exhibit 5 an excerpt from a presentation which describes various component aspects of certain embodiments of the invention described and claimed in the Subject Application. In particular, Exhibit 5 includes photographs of (1) a RIM radio modem and OBD-II interface; (2) an antenna; and (3) an OBD-II connector, each of which may be employed as components of certain embodiments of the invention. Although the date on the presentation has been redacted, the components depicted in Exhibit 5 were implemented as part of a "Mobiscan II" embodiment of the invention reduced to practice prior to May 1, 2000.
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Atty. Docket No. 0308816.0156

are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Sachi Forey  Larkin Hill Lowrey	Date July 18,20
	Date
Matthew J. Banet	
	Date
Bruce Lightner	
	Date
Diego Borrego	

Art Unit: 3661

Examiner: Brian J. Broadhead

: INTERNET-BASED SYSTEM : FOR MONITORING VEHICLES

Applicants: Lowery et al.

Lowery et al.

Serial No.: 10/614,665

Filing Date: July 7, 2003

: Confirmation No. 7577

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10. We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

	Date
Larkin Hill Lowery	
mult But	Date 9-17-07
Matthew J. Banet	
	Date
Bruce Lightner	
	Date
Diego Borrego	

Art Unit: 3661

Examiner: Brian J. Broadhead : INTERNET-BASED SYSTEM

: FOR MONITORING VEHICLES

Applicants: Lowrey et al.

:

Serial No.: 10/614,665

: Confirmation No. 7577

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further that these statements ar	e made with the knowledge that willful false statements and the
like so made are punishable by	fine or imprisonment, or both, under Section 1001 of Title 18 of
the United States Code and tha	at such willful false statements may jeopardize the validity of the
application or document or any	y registration resulting therefrom.
	Date
Larkin Hill Lowrey	
	Date
Matthew J. Banet	
Brue O. Tol	Date 7/23/2007
Bruce Lightner	
	Date

Diego Borrego

Art Unit: 3661

Examiner: Brian J. Broadhead : INTERNET-BASED SYSTEM

: FOR MONITORING VEHICLES

Applicants: Lowrey et al.

:

Serial No.: 10/614,665

: Confirmation No. 7577

Filing Date: July 7, 2003

Confirmation No. 73

## DECLARATION UNDER 37 C.F.R. § 1.131

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

# Dear Commissioner:

We declare as follows:

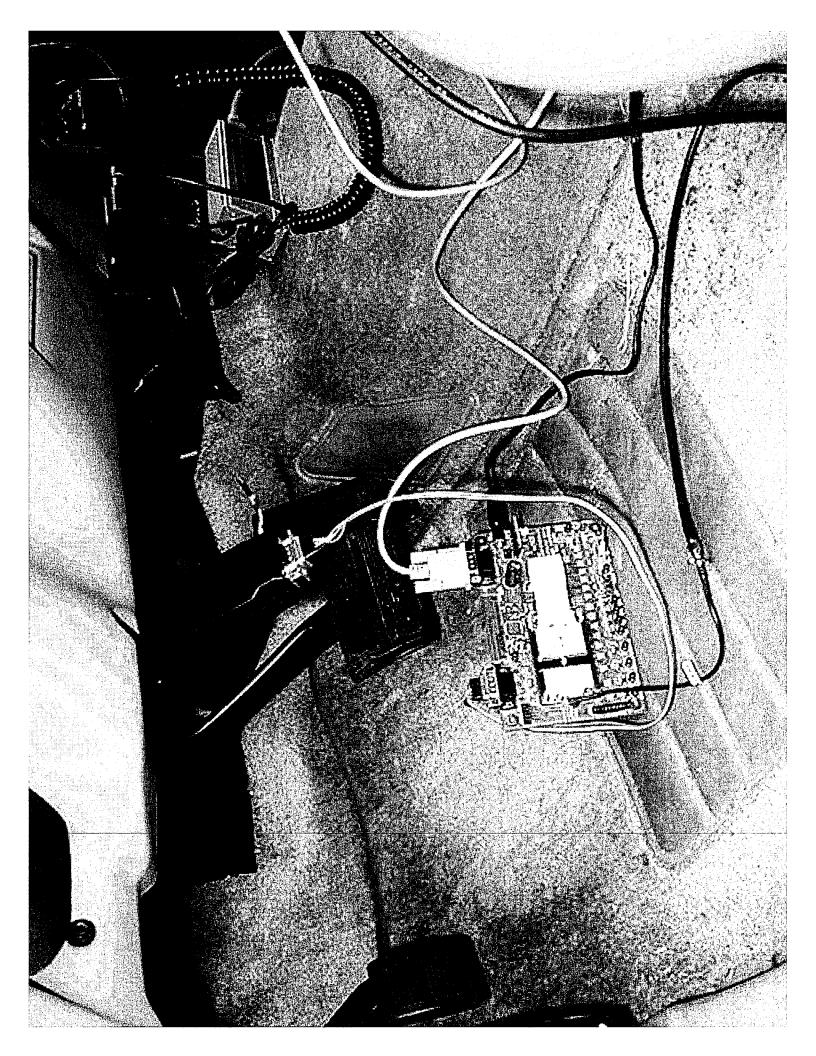
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like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of
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application or document or any registration resulting therefrom.
Date
Larkin Hill Lowrey
Date
Matthew J. Banet
Date
Bruce Lightingt
Diego Borrego  Date 8/1/2007





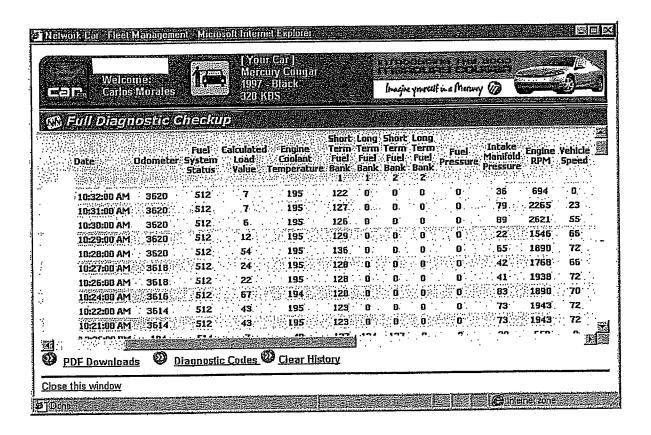
> Lightner Engineering

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From steve@freyder.net
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          for <lightner@lightner.net>;
Received: from freyder.net (frey4150.freyder.net [10.4.0.41])
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          for <lightner@lightner.net>;
Message-ID: <38712CA9.45E872D9@frevder.net>
From: Stephen D. Freyder <steve@freyder.net>
X-Mailer: Mozilla 4.61 [en] (WinNT, 1)
X-Accept-Language: en
MIME-Version: 1.0
To: "Bruce D. Lightner" clightner@lightner.net>
Subject: Re: Real ODB-II Data
References: <38712478.D3055DD80lightner.net>
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit
Status: RO
X-Status:
X-Keywords:
X-UID: 279
The space after the comma wasn't there in the original - but might not matter to
their scraper ...
"Bruce D. Lightner" wrote:
> Chuck,
> I'm now taking data ODE-II data from my 1999 Suburban, sending it via the > BellSouth network into our IAS gateway, which places it on the Web at the URL:
      http://lightner.net/obd
> The data should be in the agreed upon data format. Update rate is every two
> minutes.
> Here is sample data:
                173000
> 00, 3217029524
> 03, 257
> 04, 2
> 05, 53
> D5, 128
> D7, 128
> 08, 128
> 09, 128
> 0b, 102
> 0C, 0
> 0e, 128
> 0f, 59
> 10, 245
> 11, 0
> 12, 4
> 13, 51
> 14, 90BB
> Bruce
> Bruce D. Lightner
```

#890 P. 002/003

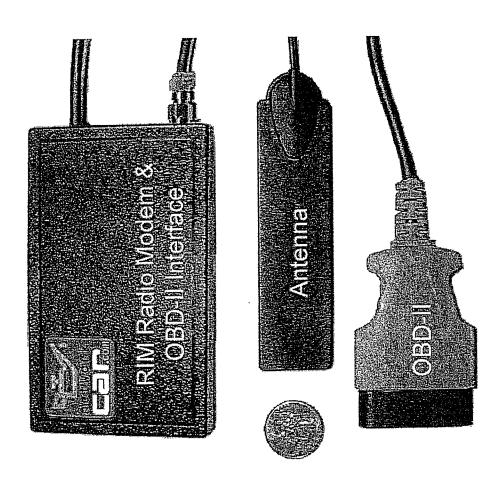
From:

> 8551 La Jolla Shores Drive > La Jolla, California 92037-3044 > Voice: +1-858-551-4011 FAX: +1-858-551-0777 > Home: +1-858-551-0770 > Email: lightner@lightner.net > URL: http://www.lightner.net/lightner/bruce/

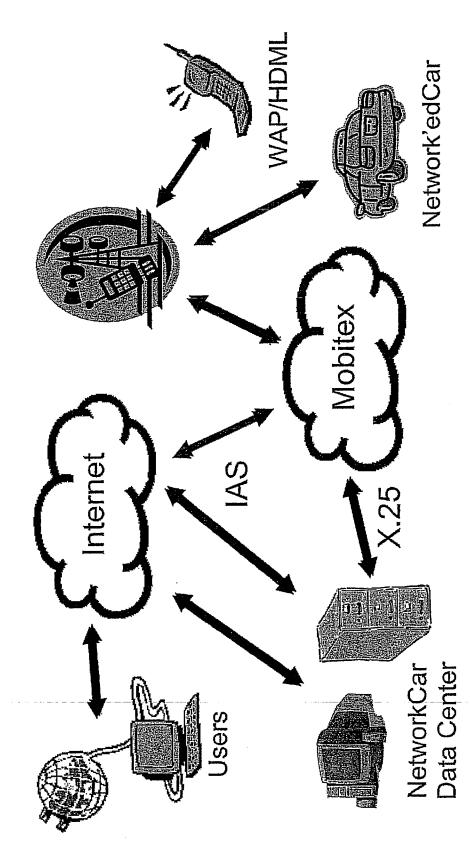


# Page 7

# Mobiscan II Prototype



# NetworkCar and Mobitex



# Appendix B

In re Application of: LOWREY et al. Group Art Unit: 3661

Application No.: 10/614,665 Examiner: Broadhead, B.

Filed: July 7, 2003 Atty. Docket No.: 0308816.0156

Title: INTERNET-BASED SYSTEM FOR MONITORING VEHICLES

# DECLARATION OF APPLICANTS' REPRESENTATIVE

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

# Dear Commissioner:

- 1. I am over the age of eighteen and competent to make the present Declaration.
- 2. I have represented and currently represent the assignee for the captioned patent application before the U.S. Patent and Trademark Office.
- 3. On April 30, 2008, I sent an e-mail to Chuck Myers, who is a named inventor on the captioned application, to his last known e-mail address (<a href="mailto:chuck@stalero.com">chuck@stalero.com</a>). The e-mail included an antedating declaration (Declaration under 37 CFR § 1.131) and supporting exhibits for the captioned application for Mr. Myers review and execution. Exhibit A attached hereto includes a copy of the e-mail and the attachments as sent to Mr. Myers on April 30, 2008.

- 4. On May 2, 2008, Mr. Myers contacted me by phone to discuss the antedating declaration and other information e-mailed to him on April 30, 2008 (see above paragraph 3). Mr. Myers told me that he needed to check with someone with respect to executing the declaration and would then get back in touch with me.
- 5. On May 14, 2008, I sent a follow-up e-mail to Mr. Myers requesting a status update on his review of the antedating declaration and other information e-mailed to him on April 30, 2008 (see above paragraph 3). I received no response to this follow-up e-mail, a copy of which is attached as Exhibit B.
- 6. On May 30, 2008, I sent an additional follow-up e-mail to Mr. Myers requesting an opportunity to call him to discuss the antedating declaration and other information e-mailed to him on April 30, 2008 (see above paragraph 3). I received no response to this e-mail, a copy of which is attached as Exhibit C.
- 7. On June 16, 2008, I called Mr. Myers and left him a voice mail message requesting a status update on his review of the declaration and other information e-mailed to him on April 30, 2008 (see above paragraph 3). I received no response to this voice mail message.
- 8. To date I have received no further telephone calls, e-mail correspondence, or other communications from Mr. Myers regarding the antedating declaration and other information e-mailed to him on April 30, 2008 (see above paragraph 3).
- 9. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further

that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Michael D. Lazzara

Reg. No. 41,142

Date

7/28/2008

# Exhibit A

### Steigerwalt, Carole L.

From:

Lazzara, Michael

Sent:

Wednesday, June 25, 2008 11:50 AM

To:

Steigerwalt, Carole L.

Subject:

FW: Assistance Requested with Patent Application (K&L Gates File Ref. 0308816.00156)

Attachments:

Declaration.pdf

From:

Lazzara, Michael

Sent:

Wednesday, April 30, 2008 2:41 PM

To:

'chuck@stalero.com'

Subject:

Assistance Requested with Patent Application (K&L Gates File Ref. 0308816.00156)

Dear Mr. Myers:

I am a patent attorney working with Hughes Telematics ("HTI") on a patent application in which you are a named inventor.

In connection with preparing a response to certain rejections that the U.S. Patent and Trademark Office has asserted against the application, I was hoping to get your assistance with reviewing and executing the attached declaration. In summary, the declaration provides evidence of how the invention was originally conceived, developed and reduced to practice by you and the other inventors.

If the declaration and attached exhibits are acceptable to you, please sign and date the declaration where indicated and then return it to me via fax (412/355-6501) or e-mail (e.g., scanned into a .pdf).

Also, please feel free to call me with any questions. We look forward to hearing from you.

Thanks. Mike



Declaration.p df (2 MB)

Michael D. Lazzara, Esq. K&L Gates Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax)

michael.lazzara@klgates.com

This electronic message contains information from the law firm of K&L Gates that may be privileged and confidential. The information is intended for the use of the addressee(s) only. If you are not an addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact the sender at the number listed above.

For more information about K&L Gates, visit us at www.klgates.com.

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3661

Examiner: Brian J. Broadhead : INTERNET-BASED SYSTEM

: FOR MONITORING VEHICLES

Applicants: Lowrey et al.

Serial No.: 10/614,665 :

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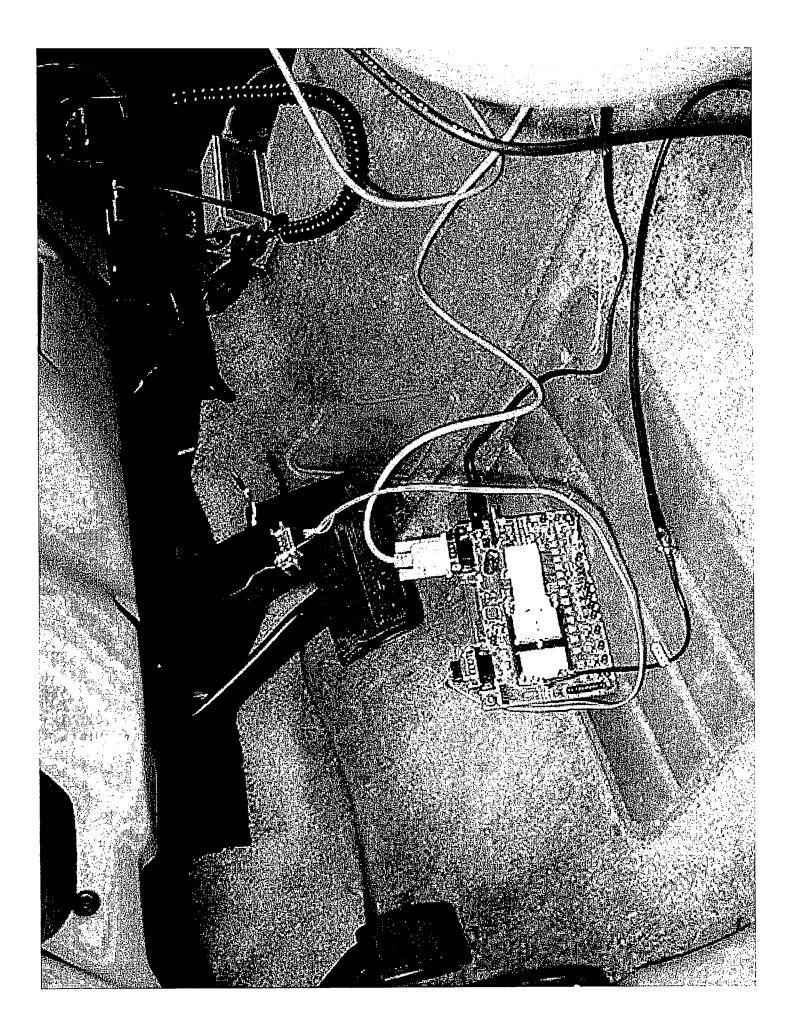
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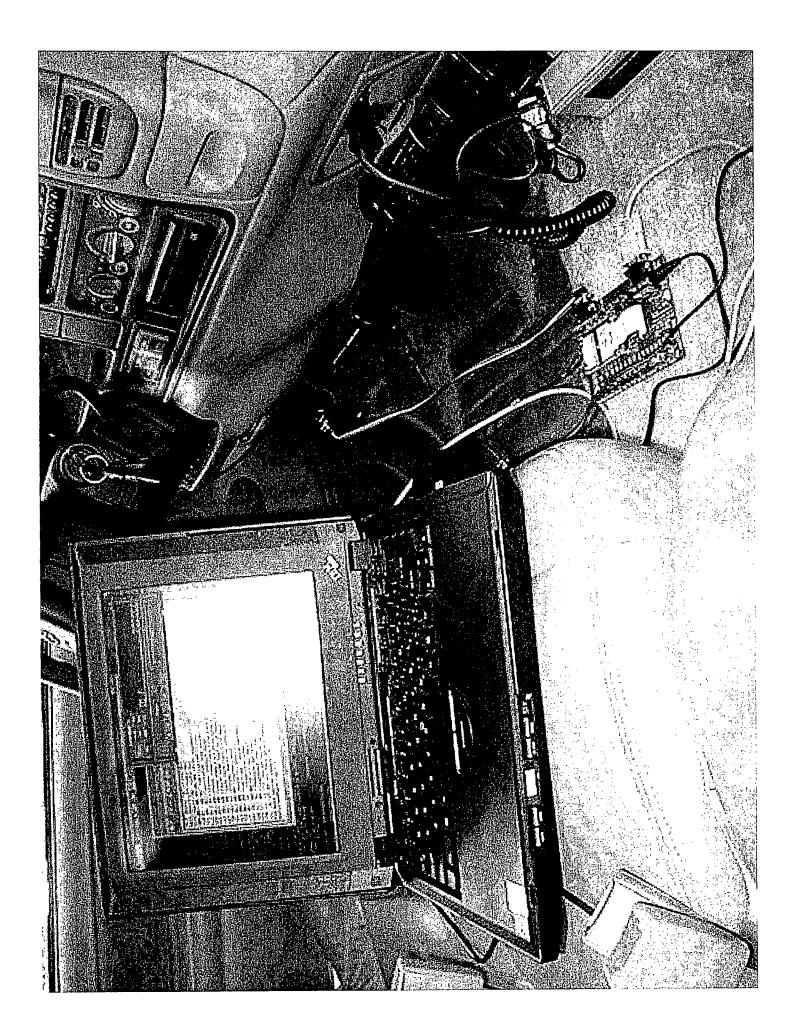
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10. We further de	clare that all statements made herein of our own knowledge
are true and that all statements made	on information and belief are believed to be true; and
further that these statements are mad	e with the knowledge that willful false statements and the
like so made are punishable by fine	or imprisonment, or both, under Section 1001 of Title 18 of
the United States Code and that such	willful false statements may jeopardize the validity of the
application or document or any regis	tration resulting therefrom.
	Date
Larkin Hill Lowrey	
Matthew J. Banet	
	Dete
Bruce Lightner	Date
Diuce Digitales	
	Date
Diego Borrego	
	Dete
	Date

Chuck Myers



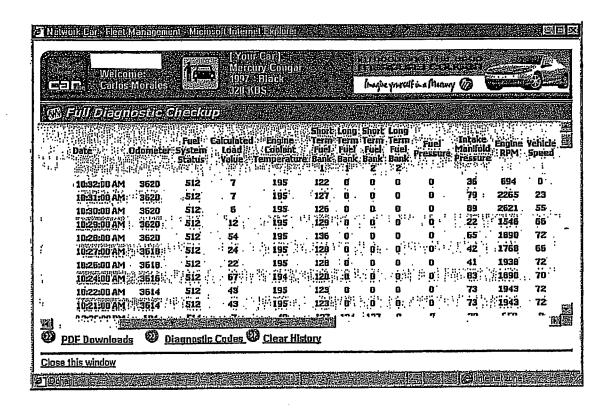


```
From steve@freyder.net
 Return-Path: <steve@freyder.net>
Return-Path: 
Received: from mail.freyder.nets
by mail.lightner.net (dt082nfa.sen.rr.com [204.210.24.250])
by mail.lightner.net (8.8.7/8.8.6) with ESMTP id FAA15533
for <lightner@lightner.nets;
Received: from freyder.net (frey4150.freyder.net [10.4.0.41])
by mail.freyder.net (8.8.7/8.8.6) with ESMTP id FAA13183
for <lightner@lightner.nets;
15:03:01 -0800</pre>
 Message-ID: <38712CA9.45E872D9@freyder.net>
From: "Stephen D. Freyder" esteve@freyder.net>
X-Mailer: Mozilla 4.51 [en] (WinNT; I)
 X-Accept-Language: en
MIME-Version: 1.0
 To: "Bruce D. Lightner" clightner@lightner.net>
Subject: Re: Real ODB-II Data
References: <38712478.D3D65DD861ightner.net>
 Content-Type: text/plain; characteus-ascii
 Content-Transfer-Encoding: 7bit
 Status: RO
 X-Status:
 X-Keywords:
X-UID: 279
The space after the comma wasn't there in the original - but might not matter to
their scraper ...
 "Bruce D. Lightner" wrote:
> Chuck,
> I'm now taking data ODE-II data from my 1999 Suburban, sending it via the > BellSouth network into our IAS gateway, which places it on the Web at the URL:
        http://lightner.net/obd
> The data should be in the agreed upon data format. Update rate is every two
> minutes.
> Here is sample data:
> 00, 3217029524
> 03, 257
> 04, 2
> 05, 53
> 06, 128
> 07, 128
> 08, 128
> 09, 128
> 0b, 102
   0c, 0
 > 0d, 0
> 0e, 128
 > OE, 59
   10, 245
> 11, 0
> 12, 4
> 13, 51
> 14, 90BB
> Brude
> Bruce D. Lightner
> Lightner Engineering
```

#890 P.002/008

From:

> 8551 La Jolla Shores Drive > La Jolla, California 92037-3044 > Voice: +1-858-551-4011 FAX: +1-858-551-0777 > Home: +1-858-551-0770 > Email: lightner@lightner.net > URL: http://www.lightner.net/lightner/bruce/



# Mobiscan II Prototype











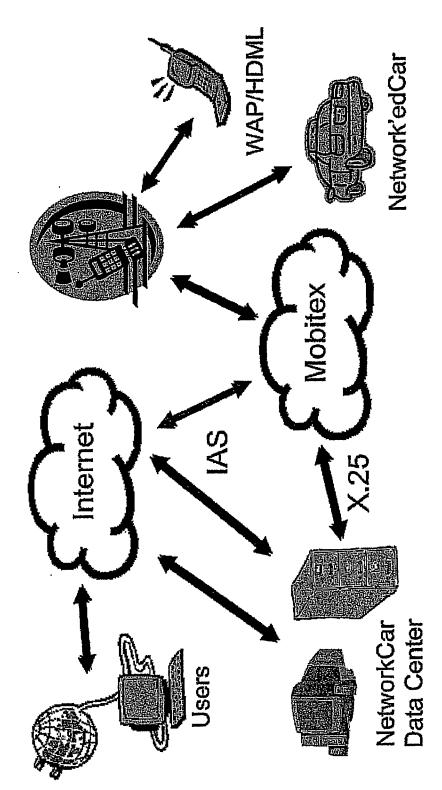








# NetworkCar and Mobitex





Page 8

# Exhibit B

### Steigerwalt, Carole L.

From:

Lazzara, Michael

Sent:

Wednesday, May 14, 2008 5:16 PM

To:

'chuck@stalero.com'

Subject:

FW: Assistance Requested with Patent Application (K&L Gates File Ref. 0308816.00156)

Attachments:

Declaration.pdf

Hi, Chuck,

Just following up on the telephone conversation we had the week before last regarding the attached declaration. At the time you had mentioned wanting to make a call concerning the declaration.

I wanted to check back to see if you now have the information you need - feel free to call me to discuss. I look forward to hearing from you.

Thanks.

Mike

Michael D. Lazzara, Esq. K&L Gates Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax)

michael.lazzara@klgates.com

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For more information about K&L Gates, visit us at www.klgates.com.

From: Sent:

Lazzara, Michael

To:

Wednesday, April 30, 2008 2:41 PM

'chuck@stalero.com'

Subject:

Assistance Requested with Patent Application (K&L Gates File Ref. 0308816.00156)

Dear Mr. Myers:

I am a patent attorney working with Hughes Telematics ("HTI") on a patent application in which you are a named inventor.

In connection with preparing a response to certain rejections that the U.S. Patent and Trademark Office has asserted against the application, I was hoping to get your assistance with reviewing and executing the attached declaration. In summary, the declaration provides evidence of how the invention was originally conceived, developed and reduced to practice by you and the other inventors.

If the declaration and attached exhibits are acceptable to you, please sign and date the declaration where indicated and then return it to me via fax (412/355-6501) or e-mail (e.g., scanned into a .pdf).

Also, please feel free to call me with any questions. We look forward to hearing from you.

Thanks.

Mike



Michael D. Lazzara, Esq. K&L Gates Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax) michael.lazzara@klgates.com

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# Exhibit C

### Steigerwalt, Carole L.

From:

Lazzara, Michael

Sent:

Friday, May 30, 2008 9:37 AM

To:

'chuck@stalero.com'

Subject:

FW: Assistance Requested with Patent Application (K&L Gates File Ref. 0308816.00156)

Attachments:

Declaration.pdf

Chuck,

Checking in again - can I give you a call sometime in the next few days to discuss this?

We're under some time pressure to file a response (including the executed declaration) with the patent office.

Thanks.

Mike

Michael D. Lazzara, Esq. K&L Gates Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax)

michael.lazzara@klgates.com

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Lazzara, Michael

Sent:

Wednesday, May 14, 2008 5:16 PM

To:

'chuck@stalero.com'

Subject:

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Thanks.

Mike

Michael D. Lazzara, Esq. **K&L Gates** Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax)

michael.lazzara@klgates.com

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Also, please feel free to call me with any questions. We look forward to hearing from you.

Thanks. Mike



Declaration.p df (2 MB)

Michael D. Lazzara, Esq. K&L Gates Henry W. Oliver Building 535 Smithfield Street Pittsburgh, Pennsylvania 15222-2312 (412) 355-8994 (voice) (412) 355-6501 (fax)

michael.lazzara@klgates.com

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